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Hastings Law News 2001 Vol.2 Iss.7

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UC Hastings College of the Law, "Hastings Law News 2001 Vol.2 Iss.7" (2001). *Hastings Law News*. Book 259.
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Volume 2, Issue 7
April 25, 2001

HASTINGS LAW NEWS

IF THERE IS TO BE A HASTINGS COMMUNITY, THE STUDENTS MUST HAVE A VOICE

Attorney General Forum



photo courtesy of Fran Marsh

From left: Former AG Nicholas Katzenbach, Harvard Professor Arthur Miller, Former AG Edwin Meese III, and Former AG Richard Thornburg, see story inside.

Former U.S. Attorneys Generals Visit UC Hastings

by John Hendrickson

Three former Attorneys Generals visited the UC Hastings campus for a forum moderated by Professor Arthur Miller of Harvard Law School. The panel discussed many varied topics, such as President Bush's recent decision to sever the American Bar Association's tie to federal judicial appointment confirmation, presidential pardon power (focusing in on President Clinton's 11th hour actions), public confidence in the FBI, comments on Attorney General John Ashcroft and a comparison between the Department of Justice now and what it was like under previous administrations and the recent

election difficulties.

Opinions were extremely varied on most topics, one of the most notable was the Year 2000 Election and the decision of the U.S. Supreme Court to intervene in that process. However, the proposition of Richard Thornburg to federally mandate technological upgrades. "The U.S. is the technology leader of the world, and elections are the core of our democratic process," said Thornburg. "We need to reform that process now."

Immediately following the forum was a reception in the Alumni Reception Center where students, faculty and alumni could mix and mingle with the panel members, complete with catering from the Law Café. Wain Fishburn, President of the Alumni Board of Governors asked Mr. Thornburg about the transition from "Washington insider" to private citizen. Thornburg replied that it wasn't too difficult, and that he'd gone back to his practice. Photo ops were handily supplied by Public Relations Director (and Dean for a day) Tim Lemon.

The forum itself is to be televised on C-SPAN at a later date.

Hastings Trial Advocacy Competition Team

by Terry Diggs, Trial Advocacy Coach and Professor of Law

If Hastings Trial Team members have learned anything this year, it's the value of a good cross-examination. In fact, the cases litigated during the team's two most recent competitions have turned on the litigators' skill at extracting information from hostile witnesses. But an appreciation of impeachment is hardly the only thing that Trial Team members have picked up: These days, the four students on the squad can also produce great cross—as well as terrifically effective directs, openings and summations. That capability is the result of two semesters of intensive training, as well as participation in three of the country's most prestigious national litigation contests.

All of the team's members have an on-going interest in litigation. Once the Bar exam is out of the way, team captain Michelle Ayers will begin work as an Alameda County prosecutor. Jason Helsel has been hired by a San Diego firm specializing in criminal trial work; and Ray Mueller, also a 3-L, insists that his principal career aim is to be a top-flight litigator. Tim O'Connor has signed on for a post-graduation job that doesn't portend much trial work; on the other hand, O'Connor's family allegiances—including a brother who's a prosecutor—and a facility for crafty rebuttal arguments, suggest that he'll eventually find his way back to the courtroom.

This year's Trial Team is largely the legacy of four students—graduates Alex Saksen, Steven Brundage, and Judy Chu—who, along with Ayers, organized training schedules and then worked to finance their participation, independent of school sponsorship, in two contests during the 1999-2000 term.

Saksen says that, as team "founders," they were motivated by a sense that classroom work in advocacy hadn't adequately tested their mettle and that the high-pressure, back-to-back trials of the national competitions would prove their ability to adapt to the professional litigator's environment—and would show potential employers that they could make the transition.

Determined to ensure that the contest experience would continue to be available to Hastings students, the team left in place the structure that led to this year's program.

Since January, the team has been competing under the Hastings banner, participating in regularly scheduled practice sessions and conducting weekly trials. In February, the team flew to San Diego to participate in the National Trial Competition, arguably the nation's largest litigation contest.

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even if it was always meager."

One of the benefits that Andrew sees about having a J.D. is that "people may listen a little more closely to my occasionally outrageous policy arguments." It does seem like having a law degree does afford more credibility among society at large!

How did he become involved in ASUCH? He was recruited by a 1L classmate who was also running for an executive board position. Would he do it again? "Definitely," he replied (some-what to the shock of this reporter). "It's such a great way to get to know various people around campus that I wouldn't have otherwise had the chance to meet. Plus I really enjoyed being the beer czar."

Andrew is planning on studying off campus next year, and won't be able to continue his ASUCH involvement until the spring. Someone else will be taking over this high-stress position. In the opinion of the Law News, his position may be filled but he will never be replaced.

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slowly over, Hastings could use the time slot to teach green 1Ls how to write law school exams. I, for one, am sure his idea will never come to fruition; it makes too much sense.

Finals is a Silly Game - One Easily Mastered

With all the hornbooks, casebooks, outlines, study guides, review sessions, sacrifices to the appropriate gods and the like, anyone can save themselves from a semester of slacking, bowl-packing and sexual-record attacking with a few intensive weeks of grade-salvation. There's a multi-million dollar industry built on gamering any student, be he diligent or a slacker, the grade he wants, not he one he deserves. I hear some of the 'just-punch-my-card' types gripe that reading the cases is a waste of time. "Smart" law students ought to spend their times learning to slam-dunk answers and memorizing The Rules, lest they become ingnomi-nous 4Ls.

Finals - Why Bother?

Final-fretting seems stupid when you hear lawyers in almost every field say they use little to none of their legal education in their work. Worse, they don't even remember what they learned. (I thought that that was only supposed to happen with high school. Maybe the problem arises with both institutions because in both, so many

Kottmeier.....from Page 11

In her upper class years, Wendy turned her focus inward, toward Hastings. However, this doesn't prevent her from participating in her favorite distractions - Sasha and Aubrey - her fiancée and his daughter, movies, hiking & cycling in the good months and sea kayaking.

Wendy is from the East coast, a town named Washington in the state of Pennsylvania. She came to southern California's University of Redlands for her undergraduate studies. As a student in the Johnston Center, she was able to design her own major, but the concentration was "Creative Writing." Well, it seems that's found the correct field for graduate studies!

As she's about to get married, I asked Wendy what the perfect wedding would be. She replied, "The one I'm planning, of course! Only smaller and less expensive!" We at the Hastings Law News wish Wendy and Sasha well in their future endeavors, and thank Wendy for all the time she's devoted to these underexposed leadership positions.

attend only to get their cards punched.)

Finals - Why Worry?

Professor Lee told a shocked § 1 during Orientation: "There's almost nothing you can do to help your grades. Some of you will do well; some won't. When I was in law school, I saw some of the hardest working students do poorly, while many, with a fraction of the effort, did well. Just do your best, and don't worry too much." Clearly, Lee is awesome.

The Final Perspective

So who's right? We all of us agree on some level that Finals and its surrounding system is stupid. Some profs apologize for the grading curve they are made to employ. Most students wonder whether Finals, and the ensuing grades, are any more indicative of a legal mind's worth and potential in practicing law than the LSAT we all mocked. (Well, I thought it was fun.)

Regardless, Finals will still be here when our kids go to law school, unless they waste their lives as doctors or artists. I say treat Finals like those junior high gym showers - everyone dreads it; everyone does it. So hide your weaknesses, always cover your ass and - never pick up the soap!

Hendrickson.....from page 11

considers to be a major influence in his life and someone whom he admires for being wise beyond his years.

John took over the reigns for the newspaper from last year's Editor in Chief, Joan Podolsky during finals. He says it's been one of the most frustrating, exciting, exhilarating, draining, and academic endeavors of his life. The paper has thrived this year under his leadership, putting out 8 issues.

John started his political career at Hastings right off the bat; he served as section representative as a 1L. Last year, he was a vigorous supporter of the student activities fee increase. He then ran for the Presidency in order to ensure that the money would go to the student organizations quickly so they could plan events that included more students. He says he will miss

almost every aspect of ASUCH and hopes that he will always have the relationships he has developed as a result of that experience. John would like everyone to know that he's grateful to the student body for allowing him to serve.



photo by Reich Lee

ASUCH President, John Hendrickson

Shafsky.....from Page 11

munality.

Hannah says students know the value of journal work and that's why so many students join a law journal. Working for WNW allows students to learn about environmental law while strengthening their research and citation skills. Because WNW is a smaller journal, WNW members become friends easily while creating a strong committed team to

make WNW a great journal. She thinks students are attracted to WNW's uniqueness in publishing policy pieces and because WNW includes photographs and artwork in each issue.

Hastings Law News

If there is to be a Hastings community, the students must have a voice.

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From Dialogue Comes Truth



Alumni Associations Director, Debra Holcomb, waits to check in 3L's

3L To-Do Day

photos by Reichi Lee



Career Services collects employment surveys from the graduating class



An applicant for the Bar has her fingerprints recorded



Classmates Christina Lau and John Hendrickson share and exchange while staffing tables



BarBri and BarPassers are on hand for Bar Review courses

Chuck D



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Editorial

Interpreting the Court: Judicial Activism v. Restraint

by Art Macomber, IL

A central theme of law school is the evaluation of court judgments. Teaching students the difference between broad and narrow readings of cases sets lifelong templates for professional judgment.

What is legal interpretation? What is judicial activism or restraint? Judges adjudicate and onlookers comment on the activism or lack thereof. Terms such as activism and restraint not only signal agreement or disagreement with a decision; they are politically charged code words indicating entire philosophies of law.

Regarding judicial activists and strict constructionists, Karl Lewellyn said:

There is the man who loves creativeness, who can without loss of sleep combine risk-taking with responsibility, who sees and feels institutions as things built and to be built to serve functions, and who sees the functions as vital and law as a tool to be continually re-oriented to justice and to general welfare.

There is the other man who loves order, who finds risk uncomfortable and has seen so much irresponsible and unwise innovation that responsibility to him means caution, who sees and feels institutions as the tested, slow-built ways which for all their faults are man's sole safeguard against relapse into barbarism, and who regards reorientation of the law in our polity as essentially committed to the legislature.

Lewellyn, K., *Remarks on Theory of Appellate Decision*, 3 Van. L. Rev. 395 (1950).

Whether you believe that human nature and institutions are dynamic or static or, as Lewellyn—both, the law goes through cycles of interpretation. Looking at United States history, Lewellyn assigned 1820-1850 as the time when "precedent guided but principle controlled." Id.

at 396. From 1880-1910, "precedent was to control, . . . principle was to . . . [make] order in the law. . . ." Id. From 1920-1947 Lewellyn said judges basically mirrored the 1820-1850 period but wrote in the style of the formalistic 1880-1910 period. Id. After that, some onlookers said the Warren Court's interpretations were driven by activism. Swinging the pendulum once more, the Burger and Rehnquist Courts are seen primarily as strict constructionists.

Judicial activists look deeper and further when interpreting laws than those who advocate judicial restraint. Today, these judicial activists look hard to sift laws through a fine sieve, to apply the thesaurus to every word in every variation, to read every statute, record, hearing transcript, ledger, and speech of the legislature looking for reasons why the law reads just so.

An activist's core argument is that actions of the legislature are the foundation of the law, not the end of the law. The Court is to build on those foundations so that the enhanced power of the state brings a greater welfare and safety to the populace. Therefore, the Court should, morally, make laws as well as apply them.

Justice Ginsburg is perceived as a judicial activist, following the path of Justices Cardozo and Brennan. In their view, the job of the Court is to interpret the law to smooth out inequities in society through an expansive reading of the law. Justice Cardozo said, "The final cause of law is the welfare of society. . . ." Cardozo, B., *The Nature of the Judicial Process* (1921).

Brennan applied this sociological method to interpretation of Title VII of the Civil Rights Act of 1964 in *United Steelworkers of America v. Weber*, 443 U.S. 193 (1979). Brennan recognized that the statute on its plain reading would not support affirmative action. So, he reasoned, "Examination of those [legislative] sources makes clear that an interpretation of the sections that forbade all race-conscious affirmative action would

[bring about an undesirable end] and must be rejected." Aldisert, R., *The Brennan Legacy: The Art of Judging*, 32 Loy. L.A. L. Rev. 673, 683 (1999) citing *United Steelworkers*, 443 U.S. at 201.

Conversely, restrained interpretation adheres to the plain language of the law, reads the law on its face, does not ascribe hidden meaning, strictly construes meaning using standard definitions of words, and clings to long-held traditions through the mechanism of precedent. The moral sense of strict constructionists is that a democracy requires citizen involvement through the legislature to make changes to the law so that the whole population has input to the governing process.

On the United States Supreme Court, Justices Scalia and Thomas claim to hew to this type of judicial restraint. In their writings, it is clear that they would like the legislature to make the law for the Court to apply, as they see the Court's job as accomplishing the latter and not the former. Strict constructionists such as these claim to read the U.S. Constitution as it is written, using their understanding of the founders' purposes to interpret that law. Even if the legislature does not construct the law well, strict constructionists will read it exactly as it says, usually interpreting it so the state is harnessed tighter by the law.

Some claim the philosophy of Brennan's lawmaking decisions and legal interpretation bring America closer to tyranny, a rule of men, and farther from a stable republic under a firm rule of law. Did the Rehnquist Court accomplish that same deed in deciding the last Presidential election? See *Bush v. Gore* 531 U.S. ____ (2000); 121 S. Ct. 525. Certainly if the philosophy of Brennan can advocate the activist genie out of the bottle, any Court, including Rehnquist's, could construe the law to their liking with no check on that power. How did this come to be? Is there danger in politicizing the Court and undermining the stability of American society? If precedent and strict constructionism is now op-

tional, instead of mandated by tradition, when did judges stop requiring them? One influential jurist may provide a clue.

In the late nineteenth century, Oliver Wendell Holmes realized that "in theory any document purporting . . . to have some legal effect has one meaning and no other." Holmes, O., *The Theory of Legal Interpretation*, 12 Harv. L. Rev. 417 (1899). This could be said of both statutes and common law. But, this ideal is never reachable. Searching for a solution, Holmes asked, "How is [the statute or document interpreted] when you admit evidence of circumstances and read [it] in light of them?" Id. Then, Holmes discusses a document as having a natural "play in the joints" due to the various possible meanings and so, he argued, we should interpret it based on "what those words would mean in the mouth of a normal speaker of English[,] . . . our old friend the prudent man." Id. If the Court does both, is precedent undetermined? Does it lose its value? Is there a slippery slope?

As if in support of this possibility, our prudent man has now broken down into several factions (using Madison's appropriate term) and now, in arguing about female plaintiffs, Rebecca Henry says, "if a [male] judge cannot imagine what women suffer from being harassed on the job, he loses access to a vivid sense of the injustice of the act. . . ." Henry, R., *The Virtue in Discretion*, 25 N.Y.U. Rev. & Soc. Change 65, 86 (1999). How can "[he] fairly decide whether the law offers any remedy for the felt injustice[?]" Id. If a male judge cannot empathize with a female plaintiff, must we match the type of judge - and their lawyers too - with the type of plaintiff? In addition, perhaps different laws should apply for African-Americans or A.A.R.P. members or gays or white supremacists? Perhaps not. But, isn't this necessarily the end result when precedent is minimized, restraint is abandoned and social engineering becomes the order of the Court?

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Trial Team.....from Page 1



photo courtesy of Prof. Diggs

The Hastings Trial Team member (from left): Jason Helsel, Mechelle Ayers, Ray Mueller, and Tim O'Connor strategize over breakfast on the last day of the National Trial Competition

In March, the team traveled to Chicago to challenge top contestants—which included groups from Harvard, Tulane, and the College of William and Mary—in the A.B.A.-sponsored National Criminal Justice Competition. At each stop, Hastings team members interacted with trial lawyers, judges and future litigators from across the country. Like the team's originators, this year's Hastings contestants want to encourage potential litigators to participate in the best single trial advocacy experi-

ence law school provides. To that end, the Trial Team will host an information/orientation session—and, yes, a pizza party!—on April 18, from 3:40-4:20. Both team members and coaches (Geoff Hansen and Terry Diggs) will be on hand to share experiences, to answer questions about team try-outs for the 2001-2002 academic year, and to offer candid information about the bruises and benefits inherent in national competition.

An Evening of Stars

by Phil Marshall, Alumni Mentor Program Director

Hastings students once again turned out in large numbers for the annual Alumni Mentor Reception on March 27th. This popular event offers a wonderful opportunity to meet and network with some of the many alumni who volunteer as mentors for Hastings students.

The reception attracted 1L's, 2L's, 3L's and alumni from the private and public sectors, including judges, prosecutors, defense attorneys, and one international consultant to foreign governments! While most mentors in attendance were graduates from the 1970's and 1980's, the 1960's and the 1990's were represented as well.

Students spent the evening "schmoozing" with alumni attorneys, as well as alumni non-attorneys. One popular mentor answered students' questions about his post-lawyer career

as a successful nightclub owner! Another shared a personal perspective on working for a "Big 5" accounting firm. Mary Noel Pepsy, the international legal consultant, described the myriad opportunities to develop democratic institutions in former communist countries. She was particularly impressed with the breadth of international experience and linguistic capabilities of the Hastings students she met.

Dean Kane used the occasion to thank the alumni mentors for their dedication to Hastings students. Sari Zimmerman and Phil Marshall used the occasion to show off the incredible gifts which mentors receive as their reward for all that dedication: a Hastings mug, or a rainbow-colored plastic slinky, both embossed with the telephone number to list a student job with Career Services.

The Alumni Mentor Program allows students to meet and learn from practitioners in many fields. The program is available to all students throughout the year. To learn more, attend one of the daily orientations in the Career Services Office. No appointment needed!

Write for the Law News!

Advertisement

Increased Volunteer Opportunities at GAAP

The General Assistance Advocacy Project (GAAP), a legal aid clinic founded by Hastings law students which serves homeless and marginally housed San Franciscans, has revived its SSI advocacy project in thanks to a generous grant by The California Endowment. GAAP is a private nonprofit corporation, staffed by a full-time Program Director, SSI attorney, two volunteers from the Jesuit Volunteers Corp, and by approximately twenty-five law student volunteers. However, with the revival of its SSI advocacy project, GAAP will need even more student volunteers to meet the pressing demand for SSI advocacy among San Francisco's homeless population.

SSI (Supplemental Security Income) is a federal public benefit available to indigent disabled individuals whose disability is so severe that they are unable to work and support themselves. The monthly SSI grant is noticeably larger than that of any other public benefits available to a needy individual and entitles the recipient to other valuable services, such as Medi-Cal. SSI, therefore, provides a real opportunity to permanently exit life on the streets.

GAAP SSI volunteers will be assigned their own case and will shepherd their client through the SSI application and/or appeals process. Such advocacy will entail interviewing the client, completing appli-

cation forms, gathering and presenting medical evidence, writing a persuasive letter on their client's behalf, and, in some cases, representing the client at an administrative hearing. The SSI application process is exceptionally intricate, and, without an advocate's help, even qualified applicants have little chance of receiving the benefits to which they are entitled.

In addition to SSI advocacy, GAAP provides homeless and low-income San Francisco residents with assistance obtaining and retaining basic county-based public assistance and Food Stamps. GAAP volunteers help to provide a core of basic services including helping clients resolve disputes with caseworkers and representing clients at administrative hearings. In addition to these basic services, volunteers have the opportunity to become more involved in community organizing and policy work by participating in monthly workgroup meetings to help formulate local welfare policy, networking with other local legal social service agencies, formulating and coordinating special projects, and assisting with fund-raising efforts.

GAAP is located at 276 Golden Gate Avenue, one block north of Hastings Law School. If you are interested in working at GAAP, please contact Annabrooke Temple or Laura Wing at 928-8191 or visit our website at www.gaap.org.

Interpreting.....from Page 4

In another example, should courts in product liability suits extend or abolish standards of limitation "in order to permit the state of the art or technology of science to catch up with a plaintiff's need to meet his or her burden of proof" in court? Scott, G., *Judge-made Law: Constitutional Duties and Obligations Under the Separation of Powers Doctrine*, 49 DePaul L. Rev. 511, 516 (1999). The blurring of law creation and law application appears to be proceeding apace. Where is the legislature in this model? Is the Court's activism a product of political gridlock in our legislature? Perhaps, like the three interlocking rings of Budweiser advertising fame, a little overlap and thus dilution of the strict separation of powers is good. Perhaps it is not.

Justice Scalia will have none of this. In his lone dissent in *Morrison*, a case authorizing a prosecutorial independent counsel, Scalia said, "It is not for [the Court] to determine . . . how much of the purely executive powers of government must be within the full control of the President. The Constitution prescribes that they all are." Shea, T., *The Great Disasters: Parallel Currents in Holmes and Scalia*, 67 Miss. L.J. 397, 415 (1997) citing *Morrison v. Olson*, 487 U.S. 654, 709 (1988) (Scalia, J., dissenting). Therefore to Scalia, judicial restraint is critical to the maintenance of a strict separation of powers with each governmental branch minding their own duties. In Scalia's view, the activist approach to legal interpretation threatens the stability of society through the breakdown of that separation of powers. If this is not the case, it is fair to ask for an outline of the alternate proposed model, to see if we are willing to risk America and our Federalist republic on its test.

As the debate continues to evolve, if "law is more than the will of the sovereign . . . it still must be rooted in human experience, in morality, and must always strive for justice." Hartnett, E., *Becoming a Lawyer*, 25 Seton Hall L. Rev. 863, 866 (1994). However justice is defined, civility requires empathy and compassion during discussions, with the understanding that this tension will continue as part of the design of our republic.

In order to determine the Hastings' faculty perspectives on this subject, a survey was distributed asking for cases epitomizing divergent views of judicial interpretation. The survey results are based on five respondents from a surveyed population of sixty Hastings law professors who contributed a core of twenty-two cases.

Respondents view these cases as critical to understanding the meaning of judicial activism and restraint. Students are encouraged to read the faculty's examples and find other pertinent readings, such as biographies, cases, and other commentary. The purpose is to expose students to the written argumentation and personalities advocating a particular type of judicial interpretation so that they will be better prepared to advocate such interpretations in their legal careers. The complete survey results appear inset to this article.

Faculty Survey 2000

- 1) Please indicate below two U.S. Supreme Court justices, from the history of that Court, and their two official opinions that provide the clearest written examples advocating an expansive reading of the U.S. Constitution.

First Justice

Earl Warren
John Marshall
William Brennan
William Douglas

Their Clearest Case

Reynolds v. Sims, 377 U.S. 533 (1964)
McCulloch v. Maryland, 17 U.S. 316 (1819)
New York Times v. Sullivan, 376 U.S. 254 (1964)
Grain v. Connecticut, 381 U.S. 479 (1965)

Second Justice

Roger Taney
Rufus Peckham
Earl Warren
Earl Warren

Their Clearest Case

Scott v. Sandford, 60 U.S. 393 (1856)
Lochner v. New York, 198 U.S. 45 (1905)
Miranda v. Arizona, 384 U.S. 436 (1966)
Brown v. Board of Education, 347 U.S. 483 (1954)

- 2) Please indicate below two U.S. Supreme Court justices, from the history of that Court, and their two official opinions that provide the clearest written examples advocating a narrow reading of the U.S. Constitution.

First Justice

George Sutherland
Antonin Scalia
Clarence Thomas
Roger Taney

Their Clearest Case

Home Building & Loan v. Blaisdell, 290 U.S. 398 (1934) (dissent)
Michael H. v. Gerald D., 491 U.S. 110 (1989)
U.S. v. Lopez, 514 U.S. 549 (1995)
Scott v. Sandford, 60 U.S. 393 (1856)

Second Justice

Horace Brown
Sandra Day O'Connor
Felix Frankfurter
Felix Frankfurter
Samuel Miller

Their Clearest Case

Plessy v. Ferguson, 163 U.S. 537 (1896)
Allen v. Wright, 468 U.S. 737 (1984)
U.S. v. Korematsu, 323 U.S. 214 (1944) (concur)
W. Va. State Board of Ed. v. Barnette, 319 U.S. 624 (1943) (dissent)
Slaughterhouse Cases, 83 U.S. 36 (1872)

- 3) Please indicate below two U.S. Supreme Court justices, from the history of that Court, and their two official opinions that provide the clearest written examples advocating a neutral reading of the U.S. Constitution.

First Justice

John Harlan (the elder)
William Brennan
John Harlan

Their Clearest Case

Plessy v. Ferguson, 163 U.S. 537 (1896) (dissent)
Texas v. Johnson, 491 U.S. 397 (1989)
Bivens v. Six Unknown Named Federal Bureau of Narcotics Agents, 403 U.S. 388 (1971)

Second Justice

John Harlan (the younger)
Robert Jackson
Harlan Stone
John Marshall

Their Clearest Case

Griffin v. Illinois, 351 U.S. 12 (1956) (dissent)
W. Va. State Board of Ed. v. Barnette, 319 U.S. 624 (1943)
U.S. v. Caroline Products Co., 304 U.S. 144 (1938)
Gibbons v. Ogden, 22 U.S. 1 (1824)

- 4) Please indicate below your favorite U.S. Supreme Court case.

Case

Marbury v. Madison, 5 U.S. 137 (1803)
W. Va. State Board of Ed. v. Barnette, 319 U.S. 624 (1943)

W. Va. State Board of Ed. v. Barnette, 319 U.S. 624 (1943)
Baker v. Carr, 369 U.S. 186 (1962)
Screech v. U.S., 325 U.S. 91 (1945)

Why?

Because much constitutional law is imbedded in it. Powerful expression against the State's ability to dictate opinion. Because it is true and courageous. protection of individual rights. Unbelievably shocking case all around.

- 5) Please indicate below your favorite law review article on any subject.

- A. David Currie, *The Most Insignificant Justice*, 50 U. Chi. L. Rev. 466 (1983)
Why? It's wickedly entertaining.
- B. Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 Harv. L. Rev. 1281 (1976)
Why? Shifted our paradigm about the structure of modern public law case.
- C. Owen Fiss, *Free Speech and Social Structure*, 71 Iowa L. Rev. 1405 (1986)
Why? Because it shows why all modern free speech doctrine is wrong.
- D. Aside, Comment, *The Common Law Origins of the Infield Fly Rule*, 123 U. Pa. L. Rev. 1474 (1975)
Why? A subtle parody of law review style and substance.
- E. Arthur Leff, *Unspeakeable Ethics, Unnatural Law*, 1979 Duke L.J. 1229 (not available online)
Why? An ongoing challenge between knowledge and belief.

Frog Frenzy



photo by Reichi Lee

In an act of unmitigated bravery, Phil places his hand in the same aquarium as his frogs

by Phil Marshall, Alumni Mentor Program Director

Okay, inquiring minds have asked for the real scoop . . . and I've decided to come out of the closet in a big way. Are you sitting down? Yes, the rumor is true. I AM a bona fide frog fanatic. I've been this way since childhood. Jars of tadpoles hidden under the bed at age 8. A bucket of froglets on the porch after mom banished them from my room. Decorative frogs when I was a Hastings student and had no time for the real thing.

But now, finally, my own little family! Six of the cutest frogs you could ever hope to meet. I can hardly believe it's been two years since they moved into my office. They're finally full grown, which for them is less than 2 inches long. That's because they're "dwarf" African clawed frogs, the miniature version of regular African clawed frogs. (You may want to start taking notes here; I'm about to get fact-intensive.)

These frogs are NOT imported from Africa; they're raised on frog farms in places like Sacramento. They are 100% aquatic, and cannot survive out of water. They have lungs like us, and must swim to the surface to breathe, but they can last two hours

but not quite as glamorous. Elwood is the skinny

little guy. Hazel and Millie are the lazy "floaters" who like to drift at the top of the aquarium.

By the way, this "floating" business is deceiving. You'd think they were snoozing, they look so inattentive. Don't buy it for a minute. They're eavesdropping on everything. Counseling sessions; resume reviews; mock interviews; you name it, they've been listening. How do I know? Believe me, I wasn't born yesterday! To substantiate my suspicions, I decided to conduct a little test.

between breaths! Their skin secretes substances which are simultaneously anti-viral, anti-bacterial, anti-fungal, and anti-parasitic. If you're ever feeling a little under the weather, you may want to stop by and pet these guys!

To set the record straight, I DO call each of my frogs by name, and they DO know their own names. (Whether they address each other by name is the subject of heated debate on campus.) Millie and Hazel are the "originals" because I adopted them before the others. Then came Madge, Ernestine, Pat, and Elwood. Pat's the one with the bad back. Ernestine has the beautiful black-on-brown skin. Madge looks like Ernestine,

Last month, right before the Russians were due to blast the Mir space station out of orbit, I casually mentioned that fact within earshot of the aquarium. "Hope it won't crash into Hastings!!!" I added, while carefully avoiding eye contact with the frogs. You would've thought I had announced plans to drain the aquarium! Their vet accused me of emotional cruelty; I accused her of highway robbery for the cost of the froggie sedatives.

Not only must I now avoid mentioning the dearly departed MIR, but I've been warning students to avoid the word "mere" as well. It's just too risky. Speaking of risk . . . a Hastings 2L recently rushed into my office to report that his newly acquired dwarf frog jumped into the garbage disposal during an aquarium cleaning. Now that's something my frogs would never do. They may not be lawyers (yet), but they're as risk-averse as a good estate planner. (FYI: David, the 2L, reports that his frog emerged unscathed!)

Regarding those rumors about my grand-frogs: it's true, every word of it. My frogs had babies!! You'll have to read my last frog report (the New Year's edition) to savor every detail. Suffice it to say that I saw everything. Renowned author Kimm Walton spoke here at Hastings shortly after the blessed event, and became an immediate convert. She and her husband are already exploring adoption. Kimm wants to start off with tadpoles; her hubby prefers "toddler froglets" who've already got their legs. As I always say to the frogs during food fights . . . "Compromise, compromise!!!"

(Editor's Note: Phil Marshall, Alumni Mentor Program Director, is also a 1992 graduate of Hastings)



photo by Reichi Lee

Phil - a man about frogs

A/PALSA Culture Night:



Our Emcees - Samantha Lee (1L)
and Minh Nguyen (2L)



Survivor Team #2 - from the left: Esmerelda
Alfaro, Eric Fogel, Matt Savinar, and Alyson
Cabrera



The Survivor Team #1 - from the right:
Burt Lee, Mihoko Ito, Mike Lum and Andrea
Trout (who eventually won the DVD player)



Kathy Steinman (left) and Hazel Dolio



Photographs by Reichi Lee
- staff Photographer

A celebration of student heritage



Eric Fogel (2L) shows there is no act too humiliating for a true SURVIVOR!



Event hosts Corinne Deveza and Minh Nguyen



Samanth Lee (1L) - a gracious host



The Noise Crew!



Many thanks, reflections on this past year and ASUCH.ORG

by John Hendrickson, ASUCH President

Academy awards, round one. This is my last article as ASUCH President, much to the relief of many! By the time this is published, we should right in the throes of elections, and there will be a new ASUCH President by the next edition. At the time of this writing, I don't know who that person will be, but I hope a year from now that person will be in a position to write an article much like this one, thanking scores of people for their support.

There are many people working on, off and around campus that do things to make our lives as students more livable. I need to thank them, and I hope that if they read these words then they understand that every student here at Hastings is thanking them, for I believe that every student would thank these people were they aware of their existence and/or the extent of their contributions.

The ASUCH Executive Board has done a tremendous amount of work this year. Arguably the most thankless task on this board was undertaken by Andrew Ingersoll as Director of Community Affairs. Without him a lot of the functions that we take for granted as students, such as the faculty lectures, Beer on the Beach, co-sponsored ASUCH functions and gymnasium scheduling would not have gone so smoothly. I was fortunate to have the opportunity to work with him, and we are all lucky that Andrew agreed to undertake the tremendous workload that accompanies this position. He did a great job.

Other ASUCH Executive Board members include Steve Chu, the Internal Vice-President, who undertook this position mid-year due to a vacancy in office. He's been able to hit the ground running and has given the Executive Board a new vigor. Connie Lucas is the

ASUCH Secretary, and aside from her other activities on campus that keep her busy, she also conceived of the Student Services Committee and gave generously of her time to the health services committee. Kristin Knox is the ASUCH Treasurer, and this year her leadership has helped to revolutionize the student funding affairs of ASUCH. She has computerized the student accounts, and gives many hours of her personal time to our smooth running and fiscal health. We have the most well funded student organizations in our history, and she was able to streamline the whole process, making it less painful for everyone concerned.

Eric Spiegelman, the ASUCH External Vice-President has revolutionized the office. He's single-handedly instituted the ASUCH.org website and has worked with outside organizations, such as the Electronic Frontier Foundation, in order to keep Hastings in the limelight of bay area law schools.

Jamie Nye was the Internal Vice-President at the

beginning of my administration. Although vacating the office for personal reasons, her service to this community should not be forgotten. Her organization and diligence ensured the Academic Planner is the useful tool that we've come to depend upon. She also worked to revise our Constitution and by-laws to give us one of the smoothest running apparatuses for administering student organizations this school has ever seen. I thank her for her service, and urge the next President to call upon her!

Rob Black served as the Parliamentarian for ASUCH, and helped things proceed smoothly during the course of the general meetings, but more importantly he has played a large role in the Student Services Committee, and was a key player in implementing the Student Services Survey website.

There are some people who are invisible to the student body at large that I have had the pleasure to work with this past year. Those people include David Seward, our Chief Financial Officer (who hopefully can take a joke once in a while) and Tom Simms, our Director of Administrative Personnel. Both these gentlemen have been very responsive to student concerns, and have worked within the bounds of their resources to accommodate us. Martin in Audiovisual Services provided a lot of support and many answers for our meetings. Mercy and Carol, the women working in the Academic

Dean's Suite, have always been happy to assist me in finding any information or helping in whatever way they could.

The Hastings Alumni has also been able to give the students support, much of it

monetary, but I have also gained much from their wisdom and counsel. The Alumni Board of Governors goes out of its way to accommodate the ASUCH President, including providing an ex officio position. The director of Alumni Relations, Debra Holcomb, has helped me out tremendously.

The Student Services office has also been extremely helpful, much as their title suggests they might be! However, the volume and quality of tasks performed by Judy Chapman and Flor Mesquita are incredible! Even though they are heavily burdened, they keep taking on new tasks, including the planning of graduation this year - their first attempt at planning this event! It will probably be the best ever. Again, we are fortunate to have them both.

The Hastings Board of Directors have been graciously receptive to my reports, have allowed me to sit at the Board of Directors' table and gave conscientious thought to all the decisions they make that impact the students. As most are alumni them-

EYE ON ASUCH



selves, they do realize the rigors of student life and have taken reasonable steps to ensure that our quality of life is as high as can be, all things considered. I believe they are working steadily to improve things for this school and this campus and our community.

Finally, I would like to acknowledge and publicly thank the deans. Deans Kane, Martinez and Marshall have all entertained my complaints, reports and questions. They have demonstrated to me that they run this institution for the students, and while there are some bureaucratic impediments that can use ironing out, they have been very accommodating. The Academic Deans' suite is an especially useful place for getting advice and making appeals concerning students, both individually and collectively, and they have my gratitude.

If you've made it this far in this article, then you are probably one of the people I've mentioned in this article! However, if you're not, then here's a synopsis of what's going on around campus from the aspect of student government:

Elections... hope you voted. ASUCH.org - check it out! Online outlines! Chuck D to speak on campus - thanks to ASUCH External Vice President Eric Spiegelman for getting the Electronic Frontier Foundation to come onto campus. Energy surcharge for tower residents. The Board of Directors voted unanimously to approve an energy surcharge for tower residents, beginning August 2001.

In reflecting back on what we've accomplished this year, I'm pleased. All ASUCH representatives are volunteers, receiving no compensation (other than dinner during the meeting) or academic credit. Sometimes you wonder why you keep showing up to the meetings because change comes slowly (as it does with any large, democratic body). However, you make your voice heard, you make some friends, you keep abreast on what's going on around campus and (believe it or not), you do make a difference.

We took over from a well-run, successful administration last year. I think we made some positive changes this year, brought some interesting speakers to campus, held some really good events (like Barrister's Ball and Cabaret), set up some good programs (like the ASUCH.org website), laid down some policies for the next administration to build upon, and didn't screw things up too much. All in all - a success.

Law News Exposes Campus Leaders

Third Year Class President, Wendy Ward-Kottmeier

by John Hendrickson, EIC

How does one serve in prominent positions that require exhaustive amounts of work, garner only complaints, provide a *tremendous* service to the student body and still maintain a smile? You need only ask Wendy. Besides her current position as President of the 3rd Year Class Council, Wendy served as the ASUCH Treasurer last year.

The President of the 3rd Year Class Council has the responsibility of handling elections for class and faculty speaker, and also planning the class gift and other activities the graduating class participates in before commencement. She received the most votes as a 3L representative not running for an ASUCH office.

As a 1L, before she got involved in these activities, Wendy volunteered time to work with the Leukemia Society and the Asian American Donor program.



photo supplied

Wendy pictured with her husband, Sasha

See Kottmeier.....Page 2

ASUCH President and Law News Editor-in-Chief, John Hendrickson

by Danielle Lee, contributing editor

John decided that he wanted to be active at Hastings because he wasn't active on campus at his alma mater, Sonoma State University. While John was pursuing his Bachelors in Economics there, he was too busy managing the information systems for a car dealership full time and owning his own

part time business to be active in college. Oh, and don't ask John what he

did before college. If he told you, he'd have to kill you. What we do know is that he worked in US Marine Corps Intelligence, and he has a slew of commendations to go with that.

Here at Hastings, "active on campus" is putting it mildly. When John isn't busy running the student body, he's busy putting the paper to bed. He has spent his third year at Hastings being the student body president and the Editor-in-Chief of the school's newspaper. As if all of that weren't enough, John spends his so-called "extra" time building resumes for battered women to help them put their lives together and teaching Street Law at the Woodside Juvenile Detention Center. John also manages to find time to spend with his son - someone whom he

See Hendrickson.....page 2

ASUCH Internal Vice President, Steve Chu, 2L

by John Hendrickson, EIC

A graduate of Vanderbilt University in East Asian Studies and Computer Science, Steve got a late start at this ASUCH executive position. Filling a void, Steve had to hit the ground running, with one of his first tasks being the organization and moderation of this semester's student organization meeting. Steve also assisted in getting the ASUCH outline bank transplanted to United Copy, for greater student access to those documents.

I try to take a formulaic approach to my questions, so when I asked him whether he would work with ASUCH again, of course he answered "yes." You'd think that would be obvious to me, since he is the only INCUMBENT on the ballot! Well, I'm going with the excuse that I didn't have that information available to me when I conducted the interview! Good luck there, Steve!

So, why is he doing this again? Well, he did have the chance to do this as an undergraduate, and wanted to be involved. Additionally, he truly enjoys the people he's working with. ASUCH takes up quite a bit of time, and if that weren't enough, Steve is also a member of the Hastings Moot Court team.

Since Steve grew up in Dhahran, Saudi Arabia, he's not looking back as a settlement option. When asked where he expected to be in 5 years, Steve replied, "Dreading the big 3-0 and hopefully doing something I love, perhaps living on the west coast." Time will tell, and the Law News believes that we'll see quite a bit out of this young man next year!



photo by Reichi Lee, staff photographer

Steve grabs a bite during the APALSA cultural night

West-Northwest Journal's Hannah Shafsky, 3L

by Art Macomber, 1L

Hannah Shafsky is the head of Hastings' environmental law journal, the West-Northwest Journal.

Hannah graduated from UC Berkeley with a B.A. in English Literature. She took two years off to work in a variety of exciting jobs like waitress, barista (a skilled coffee professional), receptionist, nanny; the list goes on!

During that time, Hannah decided on a legal career and has found the West-Northwest Journal to be the most compatible journal for her interests.

Since WNW is a newer law journal, their main goals are to increase awareness of the journal and get influential articles published and quoted in policy discussions. They are currently choosing articles and planning a symposium to strengthen their reputation in the legal com-

ASUCH Director of Community of Affairs, Andrew Ingersoll, 2L

by John Hendrickson, EIC

"The Beer Czar," this is how Andrew identifies himself with pride. Growing up in Philadelphia, he hopes to settle down where ever he's going to be most happy. That particular piece of geography remains somewhat enigmatic presently. His undergraduate major was in Ecology, and it is a life goal to increase his involvement in non-profit environmental organizations, particularly those advocating conservation.

His favorite thing about law school is the people. I guess you'd have to be a people person in order to do such a good job putting on so many fantastic events throughout the course of the year. Those events included the Barristers' Ball (where he selected the venue and conducted all negotiations), Cabaret in coordination with the Office of Student Services, the Faculty Lecture Series, and (most importantly) EVERY BEER ON THE BEACH. Of course, there is a flip side to working with interesting and intelligent professors and students, which is that everything just "mushes" together here. "Most of the time law school feels very surreal to me, and I miss having my life broken into identifiable components," said Andrew during an interview. "And being out of school for five years before coming here, I do miss the paycheck,

See Shafsky....Page 2

See Ingersoll.....Page 2

*A RECURRING SERIES OF FICTION***"I Am The Greatest!"****Part 6: The Main Event**

"Mr. Cappasso! Did you get a chance to thoroughly read through *Cine Forty-Second Street Theatre Corporation versus Allied Artists Pictures Corporation*?"

My head shot up as my heart rate quickened. It was late into the class period on October 13th and we had already discussed the other case assigned for the day. I hadn't expected the main event to start halfway through class. I should've known there'd be some opening fights on the ticket.

"Yup," Joey answered as he stared right back at Professor Marks, showing no fear. He had read the case and was ready. This was it. A truly legendary battle was about to ensue, one that would rival any of the famous Ali-Frazier bouts of the 70s. I looked around. It was impossible to tell if anyone was as excited as I was. Marks, meanwhile, grinned and charged out of his corner.

"Good. Well then perhaps you can tell me, have you ever been to Forty Second Street in New York City?"

Whoa. Was Marks trying to get into Joey's head? A shot at Joey's East Coast roots? A little mental intimidation?

"Yup."

"OK, and what type of area do you think it might have been back in 1974?"

Joey smiled. "Let's just say that it was not the most reputable of areas."

What pose. What composure. What form. This was going to be great.

"Well said, Mr. Cappasso, well said. So, the owners of, say, a cinema in this part of town might have been considered to be, perhaps, less than upstanding citizens."

A few chuckles from the crowd. Marks was showboating. But Joey's eyes followed him around the room. That's it Joey, don't let him psyche you out. Don't let him do it.

Smiling again, Joey answered, "You could say that."

"So, here we have the owners of one theater in Times Square suing some other theater owners. For what?" The first real question. Keep moving Joey. Duck and jab.

"Well, this one owner is claiming that the others are doing a bunch of things - intimidating him and keeping him from opening his theater."

Alright! Nice shot there Joey. Looking good.

"Right. And what is the issue that the court is trying to deal with here?"

Ooff, another solid jab from Marks. It would start getting tough now. The uppercuts, the hooks, they'd all be coming soon.

"The issue is whether the plaintiff acted willfully or in a grossly negligent fashion by not responding to damage interrogatories."

Uh-oh. That was not quite it. That was *an* issue but *not* the issue. The case was about an attorney who, repeatedly and in defiance of a court order, did not produce adequate answers to interrogatories. The issue was whether sanctions by the court essentially throwing out the case were fair to the plaintiff in light of the fact that it was *his* attorney who was defying the court. Joey's response invited the first real shot to the body that he received from Marks.

"Well, it seems like that had already been decided by the lower court. What did they say about that?"

A pause. Joey searched his book.

"They said that it was gross negligence."

"Right. The lower court determined that they were acting in a grossly negligent fashion by not adequately answering the interrogatories."

Phew. Joey escaped that one.

"Now, Mr. Cappasso," Marks continued, "do you think that they were acting in a grossly negligent or in a willful fashion?"

"I think they were acting willfully."

"And why is that?"

"Well, because, knowing the type of guys you got here, they were probably trying to stall or something."

Good, good. Get back into your groove, Joey. Get those hands back up. Keep dancing.

"Anything else that would make you think that, Mr. Cappasso?"

Another long pause. Joey began to sweat.

Marks continued. "They indicated that they were waiting for an expert to give them a report so they could answer the interrogatories. How long do you think that should take?"

"Well, maybe a few months."

"How about a few years? How many years had gone by in this case? Four years had gone by here and still no answers."

Uh-oh. A turn for the worse. It was always a bad sign when Marks started answering his own questions. Joey looked a little dazed.

"So what had the lower court judge done?"

"Don't they say that the plaintiff can't introduce that report they talked about as evidence?"

There you go Joey! Hit 'em back. Keep those hands up.

"Right. And what would that essentially do to the plaintiff's case?"

"Probably ruin it."

He was looking better. Answering each blow with one of his own. Things were looking up. But then...

"So what's the issue here?"

That same big shot again. At that moment, Joey looked like he had the wind knocked out of him. He glanced down to search his casebook for the answer. My heart sank. C'mon Joey.

The silence continued.

Next Time: "The Greatest"

This is the sixth installment of a 7-part *fiction* story, loosely based on Jesse's first year at Hastings. Some names, places and events have a strong *resemblance* to actual students and professors at Hastings, but these events did not occur - at least not entirely. Jesse is currently a 3L.

KOOKY LAW

By Patricia Lam, 1L

Sex-Starved Moose Defecates on Car (Reuters)

Norway — A sex-starved moose in Norway mistook a small, yellow car for a would-be partner, but defecated on it after it got no response. Leif Borgersen, owner of the Ford Ka model, found his car bathed in lick marks, saliva and moose excrement.

Man Shot Dead As Bulletproof Magic Fails (Reuters)

Ghana — A Ghanaian man was shot dead by a fellow villager while testing a magic spell designed to make him bulletproof. The man, Aleobiga Aberima, was among a group who had asked a juju man, or witchdoctor, to make them invincible to bullets. After smearing his body with a concoction of herbs every day for two weeks, Aberima volunteered to be shot to test if the spell had worked. Needless to say, Aberima died instantly. Angry Lambo residents seized the juju man and beat him severely.

Obsessive Primer Wins Appeal Under Disabilities Act (Associated Press)

San Francisco — A woman who was fired because her excessive primping and dressing rituals made her repeatedly late to work can make her case at trial and may qualify as disabled under federal law. The 9th U.S. Circuit Court of Appeals said Carolyn Humphrey deserved a chance to prove that her rights under the Americans with Disabilities Act were violated when she was fired. "A reasonable jury could conclude that if Humphrey was relieved of the stress of having to leave the house, she could perform her transcriptionist duties and thus was 'qualified' under the ADA," the appellate court said in its Feb. 13 decision.

Spare Change? Not Without the Proper ID (Reuters)

Canada — One of Canada's richest cities could soon force its panhandlers to wear photo identification as a way of controlling a

handful of beggars who hound passersby for spare change. City council in Calgary, Alberta, the country's gleaming oil-industry center, votes April 2 on the plan that would require panhandlers to agree to a code of conduct before they are granted ID badges allowing them to hit people up for coins and cigarettes.

Man Steals Corpse; Won't Return Until Market Recovers (Reuters)

Italy — A man who lost a fortune on the Milan stock market said he snatched the corpse of legendary Italian banker Enrico Cuccia and would only return it when the market boomed again. Cuccia, who ran the powerful Milan investment bank Mediobanca for some 40 years and was considered the father of Italian capitalism, died last year at 92. Italian news agency ANSA reported that the man did not want a ransom, but would only return Cuccia's body to his family when the Milan bourse index of blue chip stocks, the Mib30, made a strong recovery to 50,000 points.

Hastings Trivia Bowl '01



The Faculty Team (from left): Professors Evan Lee, Rory Little, Cheryl Hanna and Dean Marshall.



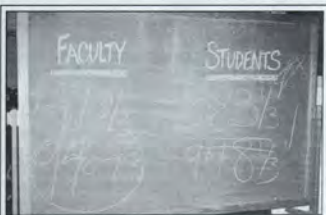
Tom Simms dispensing beer to the yet another happy customer.



The Student Team (from left): Chris Morrow (3L), Dan Kubasak (2L), Kirby Kim (1L) and Mieke Eoyang (2L).



The Cheering Section (from left): Flor Mesquita, Kathy Schmeckpeper and Judy Chapman.



Final Score: Faculty 946 & 2/3rds, Students 948 & 1/3rd. Students continue their winning streak!

photos courtesy
of Kathy
Schmeckpeper

Editorial

Legal Education - On the Rocks

by Mitch Artman, IL

My name is Mitch — "Hi, Mitch!" — and I have a problem.

You can't have any law school gathering without Alcohol.

A little confused on the finer points of ad kov rulings in the Madras District, I went to my prof's office (AKA Happy) Hour. Before I could pour a question, he reached into the freezer under his desk and pulled out two frosty mugs. "It just tastes better this way." "Of course, sir. Will this be on the test?"

Things got bad, things got worse. I joined Hastings' AA chapter. After I got my six-month chip, they celebrated by taking me out to a bar. When I complained, they bought me a watch instead. Now twice a day I beep, "It's wine-o'clock!"

I needed to get a grip. At a wine and cheese event, my advisor told me about a self-help weekend getaway for law students. I showed up (late), plopped down into a stool and listened to the keynote address: "The Sweet Unknown Power of

Mixers like Sour."

Feeling stale and bitter, I flowed into my synagogue — the one whose members are all involved in the law. It's pretty easy to find off 280 (proof); just look for the Magen David in neon lights. Walking past the dartboard and mechanical Oy-bull, I sought a book of prayer I could turn to for a chug of opsimathy. I found one, titled, "Top-Shelf Torah."

Thursday, we turned in our Moot Court briefs, and, sure enough, our instructor treated to free rounds at Lalita's — night after Beer on the Beach.

What was I to say the next day when Uber-Professor "Marks" called on me? "Mr. Artman! Did you have a chance...to do...Today's Reading?" "Please sir, not so loud. And were the lights always this bright?" What was I to tell him? That I was too drunk to read last night? That I was too hung over to read this morning? That I'm too nauseous to make it out my chair to throw up for the second Bar class in a row? "Mr. Artman, what was The Rule you learned?" "Beer before liquor, never get sicker?" His snarl indicated that I am to be the Civ Pro Bitch until I brief on command, not on draft; go

dry on sobriety jurisdiction; refer to the Reif-notes; and concede that I too am nothing before The Rules.

Every attorney I've worked for or even interviewed with made sure to push the "social aspects" of his firm. "Sure, we work hard here. But we're also a tight-knit group. We have a lot of fun together."

Know what that means? Know what that always means? Going to bars and getting hammered, shitfaced, schmaozzled. Temulent, potvaliant, potent, Maudlin, squiffy, inter pocula. The Word of the Day classes started this academic year? — Crapulous. I'm not making this up. There's your social bonding. Bonded by the glue of dried beerme paste.

The only thing law school hardens more than your liver is your social conscience. I'm telling you, they're after us. They are Borg. We're being trained. And we're being assimilated.

After P/s (drunk) Day, it finally hit me: there's a good reason law school integrates alcohol into every thread of the social fabric of our (bar napkin) lives. They're getting us ready to be real lawyers.

The Final Perspective

by Mitch Artman, IL

The last time doing something new changed my outlook on life so much, it involved Prom Night, 3 bottles of champagne, a recovering Catholic of a girlfriend and a towel that may very well still be scampering down Zuma Beach.

But now I moan and shudder for a different reason. Right now, I am smack-dab in the middle of Finals. For you, this epoch is already in the distant, dusty past. Instead, your thoughts settle on all those holiday gifts you're enjoying, all those holiday gifts you'll be returning, and your looming credit card bill, heavy with all those holiday gifts you had to give in order to receive.

So I'm writing this now, while losing my law school Finals cherry is still a fresh and vivid experience. And I'm going to share the most compelling perspectives on these weeks I've taken, heard, considered, mocked, abandoned or otherwise crossed paths with.

Finals are the Worst Part of Law School

If you thought law school was a stressful and har-

rowing experience filled with fear and loathing, finals is the zenith of Mt. Hell. Before: Those bags under your eyes bothered you. Now: Those potato sacks really bother you. Before: You didn't use alcohol to relieve stress because hitting the bottle wasn't a good idea. Now: You don't use alcohol to relieve stress because you need something stronger. Before: You did/did not like learning the material in three months. Now: You don't like relearning the material in three weeks, nor three days, nor three hours.

Finals are the Best Part of Law School

For those who outlined or only need two hours a day to study, Finals affords the one thing law school never offers, time. Time to step back and look at the big picture. Time to take a walk. Time to hit Reno.

Such student specimens are however rare. Since their friends have no time, being a leisure-lad or lady means being a loner. [Sniff]

Finals Ruined Sex for Me

Just when all those beautiful baby bunnies ended those relationships we knew wouldn't last - dumping

those long-distance boyfriends we heard about during Orientation - it is now a bad time to get involved. Few are on The Hunt when Finals are infecting their lives.

Finals Got Me Laid

Stress sex.

Finals is a Stupid Game - One We Shouldn't Have To Play

For God's sake, they don't grade us the way they teach us. See, knowing everything isn't enough.

Besides the substance involved, our classes are proffered to teach us the skills we'll need on the, or any, exam: issue-spotting, analysis, blablablablab. Yet a mastery of these skills assures you of nothing better than Bs. And getting a B when you knew and understood it all is like kissing your sister (and not the cute adopted kind, like Marsha). Knowing it all won't get the job done. Just like a salesman, you need to learn how to package and present your stuff.

One student suggested that, once LWR was merci-

See Perspective.....Page 2

Editorial

by Art Macomber, 1L

Troubling as it may seem, the fact that my Golden Gate Transit buses are manufactured in Roswell, New Mexico does not bother me. I understand the alien feelings I get on my commute are not related to the origination of the vehicle but to the dominant type of passenger. Most of the passengers work for the government.

Some people think America would be better off with a larger government. Those interested in larger government sometimes advocate a watering-down of the U.S. Constitution to that end. Some even blame that Constitution for slavery, not giving credence to the fact that slavery was here long before the Constitution, as a part of colonial America under English rule and that the Constitution was, in reality, the only vehicle we had for slavery's overthrow.

The Constitution was not a foundation for the continuance of slavery but a singular, and luckily sufficient, handhold out of that barbarism which took another seventy-odd years to abolish and another one hundred after that to affirm as the law of all the land. I wonder why more African-Americans are not oriented toward Anti-Federalism due to ancestral release from bondage under a Constitutional interpretation of individual liberty in their favor, but, strangely, the vast majority of African-American votes go to Federalist candidates advocating expansion of centralized power. Is the state's rights doctrine of federalism permanently tainted with the scars of slavery? Is a philosophy of individual liberty not an option for African-Americans?

A larger government was certainly not in the minds of the framers of that document. Article I, Section Four states, "The Congress shall assemble at least once in every year . . ." This indicates an assumption of limited government, proposing that the States would take the lead in legislative action, that the framers actually included a mandate for a yearly meeting, as if it was in doubt that Congress might attend that singular event. Certainly the framers of the Constitution did not envision a Federal Register in excess of 70,000 pages annually. Only people using hindsight to criticize the Constitution as insufficient would believe that increased government is a beneficial answer today. Perhaps these people

A musing commute

would rather the world empire of the British was still ruling America? Likely not.

Does our world require larger government today where it was unnecessary 200 years ago? Or, is government encroaching on liberty where it should not? I argue for the latter proposition. For example, the first nineteenth century gun control laws were specifically designed after the Civil War to keep newly freed African-Americans from gaining the means for self-protection of their lives and property. Those same laws are now used to disarm African-American women, families, and elderly citizens in dangerous inner-cities, even as government mandated drug laws encourage unlawful and risky drug-related market-protective behavior through drug prohibition in those same locations.

Would a widely recognized property right in one's own person coupled with a strong individual Second Amendment right to defend that property right allow self-protection by inner-city minorities? Would a medical model for drug abuse empty our prisons of non-violent offenders and minimize the carnage on our streets? Perhaps, but a centralized government need not care about individual rights and circumstances, especially when a disarmed populace is easier to control and when forfeiture laws legitimize government power over private property far exceeding anything the Fifth Amendment takings doctrine envisioned. Thus, we acquiesce to centralized government and march back toward slavery.

What do we really get for all this government? Isn't

it simply more oppression of the weakest and poorest among us? Why does government actively undercut private charity, to the point of proposing government funding of religious charities? Does any religious person care that government control inevitably will follow those funds? Should we ignore the vast destruction of charitable and voluntary enterprise wrought by the New Deal programs?

For a free people, the question is; how is growth of government stopped when about one-quarter of GDP is based on its output? Who will stand for a proposition such as limited government when much of our livelihood is dependent on this modern rendition of Hercules' nine-headed Hydra? If one did advocate for smaller government, how would they overcome the dominant paradigm that "if the government does not do it (whatever it is . . .) than it will not get done?"

We must work for a smaller and strictly limited government. As the Reverend said, "I have a dream . . . and we shall overcome."



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